of interest is too well established to need authority. The implications of what has happened here may best be resolved elsewhere.

So far as the case is concerned, the reasons why I have granted leave and extended Chatib's caveat will inevitably affect the position of the various other caveators whose position is similar to that of Chatib's. To prevent needless duplication consideration should be given to consolidation or making one case a test case. Due consideration will also be given to any application for an early trial subject of course to the appeal being pursued against the decision.

Order accordingly.

Solicitors: *H.H. Long & Co., Suppiah & Singh.*

REGENT DECORATORS (M) SDN. BHD. & ANOR. v. MICHAEL CHEE & ORS.

[O.C.J. (George J.) November 30, 1983 & February 27, 1984]
[Kuala Lumpur – Civil Suit No. C 1364 of 1983]

Passing-off – Setting-up of Regent Design (M) Sdn. Bhd. by former employees of Regent Decorators (M) Sdn. Bhd. – Whether likely to confuse public

Practice & Procedure – Mareva injunction applicable in Malaysia.

The 4th defendant, Regent Design (M) Sdn. Bhd. was a company incorporated on March 4, 1983 by the 1st, 2nd and 3rd defendants who were its shareholders and directors and who on that date were employees of one or the other of the plaintiffs. It carries on substantially the same kind of business as the plaintiff companies, i.e. dealers of all kinds of furnishing and interior decorating materials with particular emphasis on antique and period furniture from Europe.

The plaintiffs in this case complained against the 1st, 2nd and 3rd defendants using the word "Regent" as part of their trading style. The complaint was that the defendants were passing off or attempting to pass off their business as that of the 1st plaintiff. The plaintiffs also alleged that the defendants have, in breach of an understanding of confidentiality, been using the names and addresses of the current and prospective customers of the plaintiffs.

The plaintiffs sought an injunction against the defendants restraining them from using the word "Regent" as part of their trading style and from making use of confidential information which the 1st, 2nd and 3rd defendants had obtained from the plaintiffs. They also sought an order to have the word "Regent" removed from the 4th defendant's name. By a separate *ex parte* application the plaintiffs sought and obtained a *Mareva* injunction against the defendants as a result of which the 4th defendant was restrained from dealing with its assets generally including any money standing to the credit of the 4th defendant in its account No. 9073 with Bank Bumiputra.

The defendants sought to have the above orders set aside.

Held: (1) there was no evidence shown to the Court's satisfaction that there was a danger that the available assets of the defendants would be dissipated to prejudice the plaintiffs' claim. The *Mareva* injunction obtained by the plaintiffs against the defendants should therefore be lifted;

(2) where the defendants had entered into not an allied field of business but of the very same type as that of the plaintiffs there could very well be confusion in the minds of the public. There could be cases of members of the public entering into transactions with the 4th defendants thinking that in fact they were dealing with the 1st plaintiff;

(3) the people behind the plaintiffs had been since 1978 and the 1st plaintiff since 1981, trading as interior decorators and furnishers as against the 4th defendant which had functioned for about 3 months when the interim orders were made. No great harm would therefore be caused to the 4th defendant if it changes its name even if the trial court finds that in fact there was no merit in the plaintiff's complaints. Such damages suffered by the plaintiffs could be easily assessed. As against that, the trial court would in all probability conclude that the plaintiffs had suffered harm and what could prove to be incalculable damage;

(4) if the defendants had confidential information they should be restrained from misusing it.

Cases referred to:

(1) *Zainal Abidin bin Haji Abdul Rahman* v. *Century Hotel Sdn. Bhd.* [1982] 1 M.L.J. 260.
(2) *Ames Crosta Ltd.* v. *Ionex International Ltd. & Ors.* (1977) Fleet Street, Patent Law Reports 46.
(3) *Annabel's (Berkeley Square) Ltd.* v. *G. Schock* (1972) R.P.C. 838.
(4) *Saltman Engineering Co. Ltd. & Ors.* v. *Campbell Engineering Co. Ltd.* (1948) 65 R.P.C. 203.
(5) *Terrapin Ltd.* v. *Builders Supply Co. (Hayes) Ltd. & Ors.* (1960) R.P.C. 128.
(6) *Cranleigh Precision Engineering Ltd.* v. *Bryant* [1965] 1 W.L.R. 1293, 1317, 1318.

CIVIL SUIT.

D.P. Vijandran for the defendants/applicants.
S.F. Wong for the plaintiffs/respondents.

Cur. Adv. Vult.

George J.: The 1st plaintiff, Regent Decorators (M) Sdn. Bhd. was incorporated on September 23, 1981 and have since then carried on the business of dealers of all kinds of furnishing and interior decorating materials with particular emphasis on antique and period furniture from Europe.

The 2nd plaintiff, Harrods Design (M) Sdn. Bhd. was incorporated on August 5, 1982 and is an associated company of the 1st plaintiff having the same shareholders and directors. Its business is also the related business of interior designers and dealers in fittings and household requisites of all kinds.

The 1st defendant was an employee of the 1st plaintiff from July 1, 1982 to March 14, 1983. The 2nd defendant was employed by the 1st plaintiff from July 1, 1982 to December 31, 1982 and thereafter up to the first week in May 1983 by the 2nd plaintiff. The 3rd defendant had also worked from July 1, 1982 to December 1, 1982 for the 1st plaintiff and then for a short period up to April 25, 1983 for the 2nd plaintiff.

The 4th defendant, Regent Design (M) Sdn. Bhd. is a company incorporated on March 4, 1983 by the 1st, 2nd and 3rd defendants who are its shareholders and directors and who on that date were employees of one or the other of the plaintiffs. It carries on substantially the same kind of business as the plaintiff companies.

The plaintiffs have a number of complaints against the defendants most of which dovetail to the 1st, 2nd and 3rd defendants using the word "Regent" as part of their trading style. The complaint is that the defendants are passing off or attempting to pass off their business as that of the 1st plaintiff. A subsidiary complaint is that the defendants have, in breach of an understanding of confidentiality, been using the names and addresses of the current and prospective customers of the plaintiffs.

The plaintiffs caused a writ to issue against the defendants by which they sought an injunction restraining the defendants and each of them from, *inter alia*, using the word "Regent" as part of their trading style and from making use of confidential information which the 1st, 2nd and 3rd defendants had obtained from the plaintiffs. They also seek an order to have the word "Regent" removed from the 4th defendant's name. The plaintiffs also claim damages and costs. A Statement of Claim was filed on the day that the writ was issued as was an *ex parte* application for interim orders *inter alia* restraining the defendants from using the word "Regent" as part of their trading style and from using confidential information. They also sought what have come to be known as *Anton Piller* orders. They obtained the interim orders.

By a separate *ex parte* application the plaintiffs sought and obtained a *Mareva* injunction against the defendants as a result of which the 4th defendant was restrained from dealing with its assets generally including and in particular any money standing to the credit of the 4th defendant in its account No: 9073 with its bankers Bank Bumiputra.

The defendants now seek to have those orders set aside.

Now, I take it that the *Anton Piller* orders made have been duly executed. No purpose will be served at this stage in questioning those orders.

On the *Mareva* injunction, contrary to what was submitted on behalf of the defendants, I am of the view that the Federal Court's judgment in *Zainal Abidin bin Haji Abdul Rahman* v. *Century Hotel Sdn. Bhd.*[1] is authority for the existence of the jurisdiction in Malaysia for the application of the *Mareva* doctrine as applied in England. Raja Azlan Shah C.J., as he then was, in delivering the judgment of the Federal Court touched on the basis and scope of the jurisdiction as exercised by the English Courts and pointed out that the English Courts' jurisdiction used to be exercised pursuant to the discretionary powers given to the Courts by section 45 of the Supreme Court of Jurisdiction (Consolidation) Act 1925 (since 1981 the jurisdiction has been per section 37(2) of the Supreme Court Act 1981). The Chief Justice went on to suggest that paragraph 6 of the Schedule to our Courts of Judicature Act 1964 is the equipollent provision to the said section 45 of the English Act of 1925 which suggestion was followed by an analysis of the paragraph 6 which analysis provided the ratio for the conclusion that our said paragraph 6 is indeed the equipollent provision to the English section 45. The conclusion that followed was "We hold therefore that the provisions of paragraph 6 of Schedule to the Act are pertinent and do indeed apply and we are of the view that the same considerations are applicable

as in the case of the English statutory provision of 1925. We have accordingly come to the conclusion that contrary to the learned judge's view the High Court has jurisdiction to grant a *Mareva* injunction in appropriate circumstances."

In *Zainal Abidin* the Federal Court in laying down the principles on which the *Mareva* doctrine is to be applied in Malaysia summarised the scope of its application as follows:

".. It is an injunction granted *ex parte* against a defendant in a pending action to restrain him from removing assets from and now even dissipating them within the jurisdiction and so stultifying any judgment in favour of the plaintiff. It has been steadily widened so that it is now available in a personal injury claim (see *Allen* v. *Jambo Holdings Ltd. & Ors.)* and where the defendant is not a foreigner or foreign based (see *Barclay-Johnson* v. *Yuill*). Although the extensions were perhaps inevitable the judges have indicated that the jurisdiction must not be stretched too far lest it be endangered. It must not be debased into something invoked to obtain security for a judgment in advance, or pressuring a defendant into a resettlement. "The courts must be vigilant to ensure that a *Mareva* defendant is not treated like a judgment debtor" (see *A.J. Bekhor & Co. Ltd.* v. *Bilton* (supra – [1982] 1 All E.R. 577). It is consequently not accurate to refer to a *Mareva* injunction as a pre-trial attachment (see *Cretanor Maritime Co. Ltd.* v. *Irish Maritime Management Ltd.).*"

On the facts of the instant case while the Court has the jurisdiction to grant a *Mareva* injunction the question that arises is whether the Court should. Resort can again be made to *Zainal Abidin* where the Federal Court having concluded that "the Court can protect him (the plaintiff) by way of the interlocutory injunction in advance of judgment" went on to state,

"The appellant still has to establish the second requirement, that is in order to gain the particular form of protection sought by the injunction he must show that there is a danger that the company's available assets will be dissipated to prejudice the appellant's claim. That is a matter of evidence. Our appreciation of the factual material before us leads us to the conclusion that the appellant really shows very little reason for thinking that the company cannot satisfy the judgment if it were unsuccessful. On the other hand, that is a matter which lies within the knowledge of the company and it has not made full disclosure of its affairs. The defendant in a suit or matter is not called upon to prove its solvency the moment it becomes a defendant and proceedings of this kind are not a means by the use of which it can be called upon to do so."

In the instant case there has been no evidence shown to the Court's satisfaction that there was a danger that the available assets of the defendants would be dissipated to prejudice the plaintiffs' claim. I would accordingly lift the *Mareva* injunction.

What is left for consideration are the paragraphs numbered 1, 2, 3 and 4 of the Order of June 6, 1983 (enclosure 7 in the Court's file). These are the orders that relate to the complaint of passing off or attempted passing off by the defendants of their business as being that of the plaintiffs, the substantial part of the complaint being the use of the name "Regent". Part of paragraph 4 of the said order relates to the use of confidential information alleged to have been obtained by the 1st, 2nd and 3rd defendants while in the employ of one or the other of the plaintiffs.

Now, it would appear that the present managing director of the 1st plaintiff, one Lee Kean See had started a firm registered with the Registrar of Business in April 1978 as Regent Decorators and that name was promoted as a trading style in the business of interior decorators and dealers in furniture and allied household goods. It would appear that it was the firm, Regent Decorators, as a successful going concern, that metamorphosed into the company, Regent Decorators (M) Sdn. Bhd., on September, 23 1981. By his affidavit filed in support Lee Kean See stated that Regent Decorators had spent by way of advertisements for the year 1978, 1979, 1980 and 1981 $8,825.00, $6,124.90, $10,158.79 and $30,682.53 respectively. Apparently there were also promotional exhibitions held by Regent Decorators costing in 1978 some $8,000.00 and over $20,000.00 in each of the years 1980 and 1981. After its incorporation the 1st plaintiff appears to have intensified its promotional activities.

The 1st, 2nd and 3rd defendants while employed by the 1st plaintiff helped to promote the business of the 1st plaintiff. According to the 1st defendant in spite of all the hard work he and his colleagues had put in for the 1st plaintiff various benefits and increments that had been promised to them were in fact not given to them.

They "were aggrieved and felt cheated". While still in the employ of either the 1st or 2nd plaintiffs they incorporated the 4th defendant company. The object of the 4th defendant was to do business which was similar to that done by the plaintiffs.

To my mind the obvious question that arises is why had the 1st, 2nd and 3rd defendants to

adopt the fancy name "Regent" into the name of their Company. Their stand is why not in that it is a commonly used name. They contend that the plaintiffs have not acquired any rights to that word.

But the issue is not whether the plaintiffs had acquired any rights to the word "Regent" but simply a question of whether by the use of the word "Regent" in the name of the 4th defendant there is likely to be confusion in the minds of the public.

In *Ames Crosta Ltd.* v. *Pionex International Ltd. and Others*[2] there had been a company called Pionex Limited which had been founded by one Jones and one Humphrey, Jones being the originator of the name Pionex. The whole business of Pionex Limited was sold to the plaintiff who converted it into its "Pionex Division" and in which were employed Jones and Humphrey who had come along with the business. The Pionex Division business was, *inter alia,* related to pollution control. Jones and Humphrey before leaving the plaintiff's employ founded Pionex International Ltd. to import and sell protective clothing which could be said to be an allied field of activity to that of the plaintiff's. The plaintiff sought an interlocutory injunction against the defendants to restrain them from the use of the word "Pionex" in the name of their company.

The judge was Walton J. who found guidance in what he referred to as the classic judgment of Russell L.J. in *Annabel's (Berkeley Square) Ltd.* v. *G. Schock*[3] who had this to say in respect of questions of confusion (in a passing off problem):

"as a matter of common sense, one of the important considerations is whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant – as it is sometimes put: Is there an overlap in the fields of activity? But, of course, when one gets down to brass tacks this is simply a question which is involved in the ultimate decision whether there is likely to be confusion."

Russell L.J. goes on at page 844:

"Here I have no doubt at all as at present advised that there is a sufficient association between what the public would consider the field of activity in which Annabel's Club is conducted and the field of activity in which Mr. Schock indulges in the course of his escort business. Both are concerned with what might be described as 'night life' or 'night entertainment'."

In respect of those lines from Russell L.J., Walton J. states in *Ames Crosta Ltd.* at page 48:

"If that be the correct way to approach the matter, as, in my judgment it undoubtedly is, it appears to me quite clear and there would in the minds of the public here be a sufficient association between the fields of activities of the two companies. One of them goes in for the environmental control and protection and the other goes in for the direct protection of the person against hostile environment by means of providing protective clothing. It seems to me that those two fields of activities are fields of activities which most members of the public would regard as very closely allied indeed. ..."

With respect I too am of the view that the approach recommended by Russell L.J. is the correct approach and applying that to the facts of the instant case where the defendants had entered into not an allied field of business but of the very same type as that of the plaintiffs one cannot but help conclude that there could very well be confusion in the minds of the public. There could be cases of members of the public entering into transactions with the 4th defendant thinking that in fact they are dealing with the 1st plaintiff.

However, there has not been a trial of the issues the most important of which is whether there has been a passing off. In the face of that and in all the circumstances should the interim orders be allowed to remain? The answer to that question in the face of the conclusions I had arrived at on the issue of confusion turns on the balance of convenience which seems to me largely one way. The people behind the plaintiffs have been since about 1978 and the 1st plaintiff since September 1981, trading as interior decorators and furnishers as against the 4th defendant which had functioned for about 3 months when the interim orders were made. I cannot see that great harm would be caused to the 4th defendant if it changes its name even if the trial Court finds that in fact there is no merit in the plaintiffs' complaints. Such damages suffered by the defendants could be easily assessed. As against that if in fact the trial Court comes to the same conclusions that I have arrived at on the question of confusion, that Court would in all probability conclude that the plaintiffs have suffered harm and what could prove to be incalculable damage.

On the complaint of the 1st, 2nd and 3rd defendants making use of confidential information, there is no question but that if the information was confidential the use of it by the defendants or any of them was the infringement of a right. Greene

M.R. in *Saltman Engineering Co. Ltd. & Ors.* v. *Campbell Engineering Co. Ltd.*[4] at page 211 of the report reiterated the position thus:

"The main part of the claim is based on breach of confidence, in respect of which a right may be infringed without the necessity of there being any contractual relationship.

I will explain what I mean. If two parties make a contract, under which one of them obtains for the purpose of the contract or in connection with it some confidential matter, even though the contract is silent on the matter of confidence the law will imply an obligation to treat that confidential matter in a confidential way, as one of the implied terms of the contract; but the obligation to respect confidence is not limited to cases where the parties are in contractual relationship."

As to the contention that such information that the defendants had was in fact gathered by them from material which was available to anybody, if such gathering of the information took place while the defendants were in the employ of the plaintiffs and in the course of such employment then it could very well be that the use of what was thus gathered without the consent of the plaintiffs, would be an infringement of their rights.

"On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."
[Saltmen Engineering (supra)]

A passage from the judgment of Roxburgh J. in *Terrapin Ltd.* v. *Builders Supply Co. (Hayes) Ltd. & Others*[5] which was quoted with approval by the Court of Appeal in *Cranleigh Precision Engineering Ltd.* v. *Bryant*[6] starts off,

"As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication, and spring-board it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public."

It is as it should be that if the defendants or any of them has confidential information they should be restrained from misusing it.

Accordingly it is my judgment that of the orders made on June 6, 1983 that restraining the 4th defendant from dealing with its assets including monies held in its account No: 9073 with tbe branch of Bank Bumiputra at Complex Antara Bangsa, Jalan Sultan Ismail, Kuala Lumpur, should be set aside and I so order; otherwise the application enclosure (13) is dismissed. Since the defendants have partially succeeded in the application I think that the just order in respect of the costs of and incidental to the application should be that each party bears its own costs and I so order.

Order accordingly.

Solicitors: *D.P. Vijandran & Associates; Shearn Delamore & Co.*

MUNANDU v. PUBLIC PROSECUTOR

[R.Cr. J. (Gunn Chit Tuan J.) March 6, 1984]
[Kuala Lumpur – Federal Territory Criminal Revision No. 1 of 1984]

Criminal Law and Procedure – Charge of theft – Plea of guilty – Whether accused fully understood nature of charge – Plea not unequivocal plea of guilty.

In this case, the accused had pleaded guilty to a charge of theft of a bicycle. The learned Magistrate accepted his plea. Before sentence was passed the accused said in mitigation to the effect "I was drunk at the time. I took the bicycle by mistake". The accused claimed that he went on his own ladies bicycle to have a drink during the lunch break. He parked his bicycle alongside other bicycles and after his drink he took a "ladies bicycle" which he thought was his and left. He said he pleaded guilty as he was told it was a minor case and his job would not be affected and that he would receive a reprimand. The learned Magistrate fined him $300 in default three months' imprisonment and as a result of the conviction the accused who had been employed as a Government servant lost his job and pension rights. The accused instructed Counsel to ask the High Court to exercise its powers of revision.

Held: in this case the accused did not fully understand the charge or know that if he really in good faith and believing the bicycle to be his property had taken it out of the owner's possession, then he did not take it dishonestly and therefore did not commit theft. The finding and sentence must be reversed and the case remitted for re-trial before another Magistrate.